

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JANICE L. COLEMAN,

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner of Social  
Security,

Defendant.

No. C05-0333MJP

ORDER GRANTING IN PART AND  
DENYING IN PART MOTION FOR  
ATTORNEY'S FEES

This matter comes before the Court on Plaintiff's counsel's motion for authorization of attorney's fees pursuant to 42 U.S.C. § 406(b). (Dkt. Nos. 31-32.) Defendant does not object to the award of attorney's fees. (Dkt. No. 33.) Having considered the motion and response, the Court GRANTS IN PART and DENIES IN PART counsel's motion for fees.

**Background**

In May 1998, Janice Coleman filed a claim for Social Security disability benefits as a result of rheumatoid arthritis and other disabling conditions. The Social Security Commissioner denied her claim for benefits at the ALJ and Appeals Council level, and Ms. Coleman appealed to this Court. Magistrate Judge Theiler issued a Report & Recommendation ("R&R") recommending that the Commissioner's decision be affirmed, (Dkt. No. 19) but this Court declined to adopt the R&R. (Dkt. No. 25). Instead, the Court ruled that the ALJ had erred by disregarding Ms. Coleman's testimony and the "overwhelming weight" of the medical evidence, which showed that Ms. Coleman was

1 disabled. (Id. at 9). Accordingly, the Court remanded to the Commissioner for an immediate award  
2 of benefits. (Id.)

3 On May 30, 2006, Plaintiff's attorney, Robert Friedman, filed a motion requesting \$13,150.06  
4 in attorney's fees and costs from the Commissioner, pursuant to the Equal Access to Justice Act  
5 ("EAJA"), 28 U.S.C. § 2412(a), (d). (Dkt. No. 27). Because Mr. Friedman's motion was six days  
6 outside the applicable statute of limitations, the Court denied Mr. Friedman's motion as untimely.  
7 (Dkt. No. 30).

8 Meanwhile, the Commissioner awarded Ms. Coleman \$73,017 in past-due benefits, in  
9 accordance with this Court's order. (Dkt. No. 31, Ex. 2). Mr. Friedman now moves this Court for an  
10 attorney's fee award of \$18,254.25 — i.e., 25 percent of Ms. Coleman's benefits award — for his  
11 work before this Court. He points to the agreement that he signed with Ms. Coleman, which  
12 provided that he is to receive 25 percent of whatever benefits Ms. Coleman receives. (Dkt. No. 31,  
13 Ex. 5).

14 The Commissioner does not object to Mr. Friedman's fee request. (Dkt. No. 33). Ms.  
15 Coleman did not file a responsive brief, and it is unclear if she is aware of the present motion.

### 16 Discussion

17 When a court issues a judgment favorable to a Social Security claimant, the court may  
18 authorize a "reasonable" attorney's fee not to exceed 25 percent of the past-due benefits that the  
19 claimant is entitled to. See 42 U.S.C. § 406(b)(1). In this case, the Court's order remanding for an  
20 award of benefits is clearly a "favorable" decision, and Mr. Friedman's fee request falls within the 25  
21 percent ceiling set by the statute. The question here is whether the fee request is "reasonable."

22 The Supreme Court has cautioned that a district court must carefully test fee requests under §  
23 406(b)(1) for reasonableness, regardless of what the lawyer-client contract says. See Gisbrecht v.  
24 Barnhart, 535 U.S. 789, 807 (2002). Courts may look to the character of the representation in  
25 making this inquiry and may reduce fee requests for substandard representation. See id. at 808.

1 In this case, Mr. Friedman missed a chance to obtain \$13,150.06 from the Commissioner  
2 under the EAJA by filing his EAJA motion outside the statute of limitations. Had Mr. Friedman  
3 obtained both the \$13,150.06 EAJA award and his 25 percent cut of Ms. Coleman's benefits award,  
4 he would have been obligated to refund the \$13,150.06 to Ms. Coleman. See id. at 796 ("Fee awards  
5 may be made under both [the EAJA and § 406(b)], but the claimant's attorney must refun[d] to the  
6 claimant the amount of the smaller fee.") In other words, Ms. Coleman lost out of the possibility to  
7 collect \$13,150.06 as a result of Mr. Friedman missing the EAJA filing deadline.

8 In his brief, Mr. Friedman argues that Ms. Coleman would not be harmed by Mr. Friedman  
9 obtaining a full 25 percent cut of her benefits award. Essentially, Mr. Friedman pledges not to seek  
10 attorney's fees under 42 U.S.C. § 406(a) for his work before the Commissioner, instead limiting  
11 himself to the current § 406(b) fee request for work before this Court. (Dkt. No. 32, at 14). Mr.  
12 Friedman claims that, had he obtained an EAJA award and refunded it to Ms. Coleman as required by  
13 law, he would have taken it right back by filing an additional fee motion under § 406(a). (Id. at 14-  
14 15.) In other words, Mr. Friedman claims that, regardless of the circumstances, Ms. Coleman would  
15 not have kept the \$13,150.06 EAJA award.

16 Mr. Friedman's argument is unconvincing because it assumes that Mr. Friedman would have  
17 ultimately taken back the EAJA award by obtaining a fee award under § 406(a). But it is not clear  
18 that Mr. Friedman could file a successful § 406(a) motion under the facts of this case. The  
19 Commissioner is only obligated to grant fees under § 406(a) "whenever the Commissioner . . . makes  
20 a determination favorable to the claimant." 42 U.S.C. §406(a)(1). In this case, the Commissioner  
21 made unfavorable determinations at both levels of the administrative review process, and only  
22 awarded benefits after being ordered to do so by this Court. It is doubtful that the Commissioner's  
23 mere execution of this Court's order qualifies as a "favorable determination" by the Commissioner.

24 The Sixth Circuit's decision in Horenstein v. Secretary of Health and Human Services is  
25 instructive in this regard. Horenstein states that § 406(a) only requires fee awards "in cases resolved  
26 at the administrative level." 35 F.3d 261, 262 (6th Cir. 1994) (en banc). But this case was "resolved"

1 at the judicial level, not the administrative level. The Commissioner only executed the Court's  
2 judgment. Thus, it is doubtful that Mr. Friedman could successfully file for fees under § 406(a).

3 In conclusion, the Court rejects Mr. Friedman's argument that Ms. Coleman was not harmed  
4 by Mr. Friedman's failure to timely file for an EAJA award. Because Mr. Friedman denied Ms.  
5 Coleman the possibility of a \$13,150.06 EAJA award by missing the EAJA filing deadline, Mr.  
6 Friedman's fee request is not reasonable. The fee award shall be reduced by \$13,010.06, so that Ms.  
7 Coleman will be put in the same financial position as if Mr. Friedman had obtained the EAJA award.  
8 In short, the Court authorizes a fee award of \$5,104.19, equaling Mr. Friedman's requested fee of  
9 \$18,254.25 minus the \$13,150.06 EAJA equivalent.

10 The Court notes that its decision to reduce the fee award in no way reflects on the substance  
11 of Mr. Friedman's legal representation of Ms. Coleman. His work in front of this Court was well  
12 done, and ultimately benefitted his client. But Mr. Friedman missed an important deadline that would  
13 have gained his client over \$13,000 in attorney's fees. Experienced counsel, like Mr. Friedman,  
14 should not miss these kinds of procedural deadlines. And the client should not suffer the  
15 consequences of that kind of mistake.

### 16 Conclusion

17 Because a full 25 percent fee award is not reasonable, the Court deducts from the award the  
18 amount that counsel could have obtained had he timely filed for EAJA fees. Thus, the Court  
19 authorizes a fee award of \$5,104.19.

20 Dated: July 26<sup>th</sup>, 2007.

21 

22 Marsha J. Pechman  
23 United States District Judge  
24  
25  
26